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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ZOHO CORPORATION

Plaintiff,

v.

SENTIUS INTERNATIONAL, LLC

Defendant.

Case No: 4:19-cv-00001-YGR

**PLAINTIFF ZOHO CORPORATION'S
ADMINISTRATIVE MOTION TO FILE A
SUR-REPLY IN RESPONSE TO
DEFENDANT'S MOTION TO DISMISS**

Pursuant to Civ. L.R. 7-3(d) and 7-11 Zoho Corporation ("Zoho") hereby requests leave to file a sur-reply in response to Sentius International, LLC's ("Sentius") Reply In Support of its Motion to Dismiss for Lack of Personal Jurisdiction (Dkt. 17) (hereinafter "Reply"). The requested supplemental briefing is needed to correct mischaracterizations of fact and law made by Sentius in its Reply.

I. BACKGROUND

On January 1, 2019, Zoho initiated this lawsuit, in its home forum, seeking a declaratory judgment of non-infringement of two of Sentius' patents (U.S. Patent Nos. 7,672,985 ("985 patent") and RE43,633 ("633 patent") (collectively "the patents-in-suit")). See Dkt. 1. In response to the

1 Complaint, Sentius International, LLC (“Sentius”) filed a motion to dismiss under Fed. R. Civ. P.
2 12(b)(2) asserting that the Court lacked personal jurisdiction. *See* Dkt. 13. Sentius argued that the
3 allegations in Zoho’s Complaint were insufficient to establish minimum contacts to support a finding
4 of specific jurisdiction. *See* Dkt. 13, p. 7. With its Motion to Dismiss, Sentius also argued, in the
5 alternative to dismissal, that this case should be transferred to the District of Delaware pursuant to 28
6 U.S.C. § 1631 or 28 U.S.C. § 1404.
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8 In response to Sentius’ motion, Zoho filed an Amended Complaint that included additional
9 allegations regarding personal jurisdiction. Dkt. 14, ¶¶ 7-10. Zoho also filed a separate response to
10 Sentius’ Motion explaining that the Amended Complaint rendered the motion to dismiss moot and
11 explaining that the Motion to Transfer should be denied. Dkt. 15.
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13 On March 25, 2019, Sentius filed its Reply which included several misstatements of fact law.

14 **II. SENTIUS MISREPRESENTS FACTS IN ITS REPLY**

15 In its Reply, Sentius incorrectly contends that its Motion to Dismiss for lack of personal
16 jurisdiction is not mooted by Zoho’s filing of an Amended Complaint because, according to Sentius,
17 the Amended Complaint does not “add any material facts upon which to exercise personal
18 jurisdiction.” Dkt. 13 at 1. However, contrary to Sentius’ assertion, Zoho’s Amended Complaint
19 includes several paragraphs of new allegations that are material to personal jurisdiction which were
20 not addressed by Sentius’ Motion to Dismiss. Dkt. 14, ¶¶ 7-10. For example, Zoho’s Amended
21 Complaint alleges for the first time that Sentius hired an agent in the District who “from his offices in
22 this District ...participated in a broad range of activities in the furtherance of enforcement of the
23 patents-in-suit including participation in the preparation of Complaints, briefing, letters and
24 infringement analysis.” *Id.* at ¶ 8. It also includes new allegations that Sentius representatives
25 “traveled to this District to meet with one or more companies to discuss the company’s alleged
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1 infringement of one or more of the patents-in-suit.” *Id.* Sentius’ Motion to Dismiss, which is
 2 directed to the original Complaint, does not address any of these allegations. *See* Dkt. 13, pp. 7-8.

3 **III. SENTIUS MISCHARACTERIZES LAW IN ITS REPLY**

4 In its Reply Sentius also mischaracterized several cases in an attempt to conjure support for
 5 the notion that an amended complaint filed as a matter of right does not moot a pending motion to
 6 dismiss directed to an earlier filed complaint. But the cases Sentius relies on expressly contradict the
 7 principle Sentius relies on them for. For example, the *Yates* case expressly states that “amended
 8 complaints supersede the original pleading, the filing of the amended complaint in this case did
 9 technically render the pending motion to dismiss moot.” *Yates v. Applied Performance Techs., Inc.*,
 10 205 F.R.D. 497, 499 (S.D. Ohio 2002). And, the *Moral Law* case does not even involve a motion to
 11 dismiss that is directed to an inoperative earlier filed complaint. Instead, in that case motion to
 12 dismiss was filed *after* the amended complaint and was expressly directed to the amended complaint.
 13 In that context, the court held that the motion to dismiss was (obviously) not mooted by the filing of
 14 the amended complaint. *Found. for Moral Law, Inc. v. Infocision Mgmt. Corp.*, 2008 WL 5725627,
 15 at *3 (N.D. Ohio May 27, 2008).

16 **IV. GOOD CAUSE EXISTS**

17 Good cause exists here for granting leave for sur-reply so Zoho can address Sentius’
 18 mischaracterizations. *See e.g., Landmark Screens, LLC v. Morgan, Lewis & Bockius*, 2010 WL
 19 3629816, at *2 (N.D. Cal. Sept. 14, 2010) (sur-reply permitted where authority cited for first time in
 20 reply papers). Zoho submits that it will benefit the Court to address these matters in writing before the
 21 hearing, rather than for the first time at the hearing. This Court previously has permitted the filing of
 22 sur-replies to both address new arguments and correct the record. *See Universal Trading & Investment*
 23 *Co. v. Kiritchenko*, 2006 WL 515625 (N.D. Cal. Feb. 28, 2006). Attached as Exhibit A is a copy of
 24 Zoho’s proposed sur-reply.
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2 Dated: April 16, 2019

Respectfully submitted,

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